

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
AUGUST 1, 2019**

*Work Session
1:40 p.m.
Warren Green Building
10 Hotel Street
Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held a work session on Thursday, August 1, 2019, beginning at approximately 1:40 p.m. in the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; Mr. Lawrence G. McDade; and Mr. Benjamin Tissue, Jr. Also present were Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Mr. Adam Shellenberger, Chief of Planning; Ms. Mary Catherine Anderson, Senior Assistant County Attorney; Ms. Kara Krantz, Planner; and Mrs. Fran Williams, Administrative Manager.

MINUTES:

Board members reviewed the July 3, 2019 minutes.

AGENDA ITEMS:

VARIANCE #VARI-19-010932 – PETER J. & BARBARA E. DECLEMENTE (OWNERS/APPLICANTS) – DECLEMENTE PROPERTY – An application for a variance of Zoning Ordinance Section 3-405.1 to reduce the minimum required rear yard setback, PIN 6994-99-6619-000, located at 5743 Myriah Court, Cedar Run District, Warrenton, Virginia. (Amy Rogers, Staff)

Ms. Rogers reviewed the application.

SPECIAL PERMIT #SPPT-19-011440 – A. KENT ALLEN & L. RAE STONE a/k/a LINDA RAE STONE (OWNERS/APPLICANTS) – VIRGINIA EQUINE IMAGING – An application for a Category 13 Special Permit to allow a veterinary clinic, PIN 7012-14-5206-000, located at 2716 Landmark School Road, Scott District, The Plains, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the application.

The meeting was adjourned at approximately 1:50 p.m.

***Regularly Scheduled Meeting
2:00 p.m.
Warren Green Building
10 Hotel Street
Warrenton, Virginia***

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, August 1, 2019, beginning at 2:00 p.m. in the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; Mr. Lawrence G. McDade; and Mr. Benjamin Tissue, Jr. Also present were Ms. Holly Meade, Director of Community Development; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Mr. Adam Shellenberger, Chief of Planning; Ms. Tracy Gallehr, Deputy County Attorney; Ms. Mary Catherine Anderson, Senior Assistant County Attorney; Ms. Marianne Primeau, Senior Assistant County Attorney; Ms. Kara Krantz, Planner; and Mrs. Fran Williams, Administrative Manager.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Ms. Krantz read the public hearing protocol.

Mr. Shellenberger stated that, to the best of his knowledge, the cases before the Board of Zoning Appeals for public hearing have been properly advertised, posted and letters of notification sent to adjoining property owners.

MINUTES:

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to approve the July 3, 2019 minutes.

The motion carried unanimously.

REGULAR AGENDA:

VARIANCE #VARI-19-010932 – PETER J. & BARBARA E. DECLEMENTE (OWNERS/APPLICANTS) – DECLEMENTE PROPERTY – An application for a variance of Zoning Ordinance Section 3-405.1 to reduce the minimum required rear yard setback, PIN 6994-99-6619-000, located at 5743 Myriah Court, Cedar Run District, Warrenton, Virginia. (Amy Rogers, Staff)

Ms. Rogers reviewed the staff report.

Mr. Meadows opened the public hearing.

Michael T. Brown, Esq., representative, expressed agreement with the staff report, with several clarifications. Mr. Brown stated that the staff report seems to indicate that the applicants used the open space parcel located behind their property as their own, with the approval of the Cedar Knolls Homeowners' Association (HOA). However, it was not until a September 2018 survey was completed that they became aware the low retaining wall which they had constructed encroached on the property belonging to the homeowners' association. He noted that the homeowners' association has provided a letter signed by its president and vice-president stating that they are aware of the encroachment and they have no objection to granting the variance.

Mr. Brown also referred to a letter, submitted by Mrs. Linda Saffer, a neighbor who lives on the other side of the Cedar Knolls open space parcel, which requests that a privacy fence be installed along the property line between the homeowners' association property and her rear boundary line. Mr. Brown stated that he takes exception to this request since the photographs submitted by the applicants accurately shows the densely vegetated and wooded area, which already provides an effective screen. He did, however, note that the applicants had previously approached the homeowners' association for permission to extend, at their own expense, an existing privacy fence in this area. Permission has been granted for them to extend the privacy fence approximately 56' and they are willing to do so if the variance is approved.

Mr. Brown stated that the applicants obtained a building permit in 2004 to construct a garage. He noted that there were extra materials from this project and the contractor suggested they be used to construct a sunroom on an existing concrete slab. The applicants agreed to this, but were unaware that the existing building permit needed to be amended. Mr. Brown stated that these improvements were done 15 years ago and it was only recently discovered that there was an issue.

Mr. Brown also clarified that he has researched the possibility of obtaining a boundary line adjustment between the applicants' property and the homeowners' association; however, this would prove to be an extremely long and complicated process requiring an extensive amount of work to include a possible full amendment to the Declaration of Covenants.

Ms. Kris Countryman, daughter of the applicants, stated that her parents did not gain anything by constructing the three tier retaining wall, but rather, it was done to preserve the open space and alleviate erosion. Ms. Countryman stated that she believes the concrete slab where the sunroom is located had been on the property since the house was constructed by the previous owners in 1988. She emphasized that it was not the applicants' intent to avoid getting a building permit for the project. They did obtain a building permit for the construction of the garage and the contractor suggested they use the remaining materials from this project to build the sunroom. The applicants agreed to this not realizing that an amendment to the building permit was required. In addition, Ms. Countryman stated that obtaining a boundary line adjustment is not feasible since the homeowners' association is essentially non-functioning. While there is a president, vice-president, secretary and treasurer, no dues have been collected for several years.

Mr. Meadows asked why it is not feasible to have the homeowners' association authorize a boundary line adjustment yet it can give permission to construct a retaining wall and state there is no objection of the granting of a variance to encroach on its property.

Mr. Tissue stated that a homeowners' association usually has bylaws which outline each officer's role as well as what is required to be obtained from the entire body.

Ms. Countryman replied that she does not have a copy of the bylaws and would not want to misrepresent what was said by the homeowners' association. She asked that the letter be referred to for its exact wording.

Mr. Tom Cook, a neighbor, stated that, while he does not have a copy of the bylaws, he was a previous president of the homeowners' association and the decision process involves the whole board and a vote by the entire membership. Mr. Cook presented the Board with a petition, signed by five neighbors, objecting to the variance being granted due to the structures being a visual nuisance and creating a substantial detriment to their properties. He noted that while the property looks nice in the summer because of the dense vegetation and trees, during the winter months, there is no screening. He suggested that a privacy fence could alleviate this issue as well as stopping the piles of debris he finds when he occasionally goes to the common area.

Mr. McDade inquired about an existing privacy fence that the applicants' representative mentioned.

Mr. Cook stated that there is no privacy fence in the common area; however, there is one on a neighbor's property.

Mr. McDade also stated that the sunroom was constructed approximately 15 years earlier and asked what has changed during this period.

Mr. Cook stated that everything was fine until someone moved in with the applicants and they started bringing in various types of equipment and throwing debris in the common area.

The Board allowed Ms. Countryman to return to the podium to indicate the approximate location of the fence on a presentation slide.

Ms. Barbara Cook, a neighbor, expressed her frustration due to the lack of screening. She stated that a privacy fence, if constructed with an attractive material, would be a much needed improvement.

In that there were no further speakers, Mr. Meadows closed the public hearing.

Mr. Meadows stated that when considering variances in the past, it has been the Board's practice to request that an applicant pursue other available options first.

Board members discussed the option of a boundary line adjustment between the applicants' property and the Cedar Knolls Homeowners' Association open space parcel.

Mr. Brown requested a postponement of up to 90 days to allow time for the applicants to approach the homeowners' association about a possible boundary line adjustment.

Mr. Tissue stated that the applicants should also discuss the proposal with the neighbors who have expressed concern.

On motion made by Mrs. Cooper and seconded by Mr. Tufts, it was moved to postpone action on this item until up to the third next regularly scheduled meeting, at the applicant's request, with the public hearing closed.

The motion carried unanimously.

SPECIAL PERMIT #SPPT-19-011440 – A. KENT ALLEN & L. RAE STONE a/k/a LINDA RAE STONE (OWNERS/APPLICANTS) – VIRGINIA EQUINE IMAGING –

An application for a Category 13 Special Permit to allow a veterinary clinic, PIN 7012-14-5206-000, located at 2716 Landmark School Road, Scott District, The Plains, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

Mr. Meadows opened the public hearing.

Michael T. Brown, Esq., representative, expressed agreement with the staff report. Mr. Brown addressed issues related to the neighbors' concerns about road usage. He stated that the applicants have been operating this business at its current location for more than 20 years and during this time there have never been any complaints nor any indication of vehicle accidents in this area. The applicants are not proposing any changes to their business model so there is no anticipation of an increase in business. Rather, they would like to put in a few improvements to better accommodate their existing clientele. Mr. Brown noted that since there are numerous horses in the surrounding area, there are bound to be horse trailers traveling along the roads. A recent informal survey revealed an average of only four to five horse trailers per day entering or leaving this property.

Mr. Brown stated that the proposed indoor riding ring will mainly be for the personal use of the applicants. However, there are occasions (i.e., rainy weather and extreme cold when the ground is frozen) when extra precautions need to be taken with client's horses. It would only be during these times that horses belonging to clients would be using the indoor riding ring. In addition, Mr. Brown clarified that this is not a commercial boarding facility. He also noted that all improvements will be designed to maintain the character of this scenic area. Mr. Brown stated that staff from the Virginia Outdoors Foundation (VOF) have been on-site and reviewed the plans for this proposal since the property is subject to an open space conservation easement administered by them. He emphasized that the VOF, which has stricter standards than the Zoning Ordinance, has approved the proposal.

Mr. Brown clarified that the issue of removing the condition limiting the approval to the current applicants and not allowing it to transfer to a new owner in the event the property is sold was not part of the applicants' original request. Rather, this condition is something the Board frequently imposed in the past, but they have since determined it is inappropriate for a Special Permit.

Mr. James Rich, a neighbor, stated that the applicants have been extremely good neighbors. He did, however, express concern about safety along Landmark School Road, stating that the infrastructure in this area cannot support significant recurring commercial traffic. He requested the reinstatement of a previous condition which prohibited access on a very dangerous section of Landmark School Road and asked that this restriction be advertised to all clients of the facility. Mr. Rich also asked that the proposed riding ring not be used for commercial purposes. In addition, he stated that while the applicants are good neighbors, in the event that the property is sold, he would like to see the new owners come back to the Board for approval to continue this use.

Dr. A. Kent Allen, applicant, stated that his office is extremely diligent in requesting that clients avoid using Landmark School Road from Middleburg. The Virginia Equine Imaging website instructs clients to use specific routes when traveling to the facility and his office again reminds clients of this when calling to verify appointments. He also stated that he is not aware of any traffic accidents in this area involving his clientele.

In that there were no further speakers, Mr. Meadows closed the public hearing.

Mr. McDade stated, for the record, that he has used the services of Virginia Equine Imaging in the past and that he was specifically advised of the route to use.

Mr. Meadows stated, for the record, that in the past, when the Board granted a Special Permit, approval was limited to the applicant and it did not convey with the sale of the property. However, it was determined by Counsel that this practice was not advisable. Mr. Meadows also stated that placing a condition on a specific route for clients to take is unenforceable. He noted that it appears the applicants have been notifying clients of the preferred route to access the facility.

After discussion, on motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to grant the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties or will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

6. The proposed use is consistent with the general standards for Special Permits.
7. The type and amount of traffic generated by the use is such that it will not cause an undue impact on neighbors or adversely affect the safety of road usage.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The use shall be in general conformance with the information and drawings submitted with the Special Permit application, except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. The hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday. Business traffic shall be limited to the hours of operation.
3. The operation shall be a non-surgical facility.
4. Ingress and egress to the veterinary clinic shall be limited to the property's southern entrance off Landmark School Road.
5. All existing and future signage shall be permitted and in compliance with Article 8 of the Zoning Ordinance.
6. All applicable zoning, building, land disturbance and health permits shall be obtained prior to establishment of the use.
7. A Site Plan shall be approved prior to establishment of the use.

On motion made by Mr. McDade, it was moved to amend Condition #4 of the above motion, as follows:

4. Ingress and egress to the veterinary clinic shall be limited to the property's southern entrance off Landmark School Road. *The applicant shall notify clients to access the property from Halfway Road via Landmark School Road to the south.*

In that there was no second, the amended motion failed.

Thereafter, the original motion carried unanimously.

OTHER BUSINESS:

- Ms. Gallehr reviewed the historical aspect of the Board of Zoning Appeals' holding work sessions.

After discussion, on motion made by Mrs. Cooper and seconded by Mr. Tufts, it was moved to begin the Board of Zoning Appeals' public hearings at 2:00 p.m. without conducting a work session prior.

The motion carried unanimously.

- Ms. Anderson stated that staff is currently working with the Information Technology (IT) department so that all Board members will have County e-mail addresses to conduct official business.
- Ms. Gallehr stated that the County is currently reviewing security measures related to card access keys.
- Mr. Shellenberger stated that Mr. Ben Holt has accepted a position with the Town of Culpeper and Ms. Marie Pham has accepted an offer from Loudoun County, with her last day being August 2, 2019.

ADJOURNMENT:

There being no further business, the meeting was adjourned at approximately 3:55 p.m.

John R. Meadows, Chairperson

Fran Williams, Secretary

Copies of all files and materials presented to the BZA are attached to and become part of these minutes. A recording of the meeting is on file for one (1) year.